

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

STEPHEN PARKER,

Petitioner,

vs.

RENE PENA; DAVID
ROUNDSTONE; CALVIN WILSON;
JACK NARVIN; ROCKY
MOUNTAIN REGIONAL
DETENTION FACILITY;
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

CV 20-190-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on May 5, 2021. (Doc. 7.) The Magistrate recommended that Stephen Parker's petition be dismissed for failure to prosecute and a certificate of appealability be denied. (*Id.* at 5).

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. Federal Rule of Civil Procedure 6(d) extends that period by 3 days when a party is served by mail. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendations for

clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After reviewing the Findings and Recommendations, this Court does not find that the Magistrate committed clear error. Parker was ordered to provide additional information supporting his petition seeking federal habeas corpus relief on April 6, 2021. (Doc. 6). Parker failed to provide the requested details. After considering all relevant factors, Magistrate Cavan found that dismissal of the action was appropriate under Fed. R. Civ. P. 41(b) and recommended as much. This Court similarly finds that Parker’s failure to respond to Court orders represents a failure to prosecute and that the relevant factors weigh in favor of dismissal. *See Carey v. King*, 856 F.2d 1439 (9th Cir. 1988).

Further, a certificate of appealability is denied in the matter as Parker fails to make a substantial showing that he was deprived of a constitutional right and no reasonable jurist would find otherwise due to Parker’s failure to prosecute. *See Gonzalez v. Thaler*, 565 U.S. 134 (2012).


IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 7) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Parker's petition (Doc. 1) is DISMISSED under Fed. R. Civ. P. 41(b) for failure to prosecute.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

The Clerk of Court is directed to enter judgment by a separate document.

DATED this 1st day of June, 2021.



SUSAN P. WATTERS
United States District Judge